

*United States Court of Appeals
for the Second Circuit*



APPENDIX

76-1285

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

To be argued by
DAVID GOTTLIEB

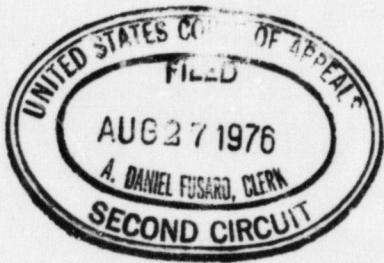
UNITED STATES OF AMERICA,
Appellee,
-against-
MICHAEL JOURNET
Defendant-Appellant,

Docket No. 76-1285

B
P/S

APPENDIX FOR APPELLANT JOURNET

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.
THE LEGAL AID SOCIETY,
Attorney for Appellant
MICHAEL JOURNET
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

DAVID GOTTLIEB
JONATHAN J. SILBERMANN

of Counsel

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TES DISTRICT COURT - CRIMINAL DOCKET

Felony JUDGE/ MAGISTRATE Assigned Trial
 Offense 207 1 0718
 Minor District Office Disp./Sentence

• U.S. vs.

JOURNET, MICHAEL

75 CR 849

Case Filed

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Def.

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ARGES

21-841(e)(1) Did conspire to distribute cocaine
 846 and to conceal existence of the
 18-2 conspiracy etc.

2

EYS.

Clayman

COSTANTINO

JUDGMENT

11-10-75

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ARREST INDICTMENT PARRAIGNMENT TRIAL SENTENCE

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DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
6-4-76	count 2 - sentence adjd without date - bail contd. Before COSTANTINO J - case called - deft & counsel E. Kelly present - deft sentenced to imprisonment for a term of 8 years plus special parole term of 7 years. On motion of AUSA Clayman count 1 is dismissed and the underlying indictment is dismissed.				
6-4-76	Judgment and commitment filed - certified copies to Marshal				
6-9-76	Judgment & commitment retd and filed - deft. del to MCC, NY/				
6-9-76	By COSTANTINO J - Order filed releasing bail.				
6/11/76	Notice of appeal filed				
6/11/76	Docket entries and duplicate of notice of appeal mailed to court of appeals				
6-15-76	2 stenographers transcripts filed (one dated 4-5-76 and one dated 6-4-76)				
6-21-76	Stenographers transcript filed dated June 4, 1976				
7-6-76	Copy of order received from C of A that record on appeal be docketed by 7-28-76 filed.				
7-13-76	Notice of motion filed for an order releasing deft on his own recognizance or minimal bail pending a determination of his appeal.				
7-27-76	Record on appeal certified and mailed mailed to the court of appeals.				
		(a)	(b)	(c)	(d)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOV 11 1975

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P.M.....

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UNITED STATES OF AMERICA

- against -

MICHAEL JOURNET,
SALVATORE RUSSO and
JOHN DOE,

Cr. No.
(T.21, U.S.C. §841(a)(1),
§846; and T. 18, U.S.C.
§2)

Defendants.

----- X
75 CR 849

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 21st day of May 1975 and the 29th day of May 1975, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants MICHAEL JOURNET, SALVATORE RUSSO, JOHN DOE and others known and unknown to the grand jury did knowingly and intentionally combine, conspire, confederate and agree to violate Section 841(a)(1) of Title 21, United States Code.

1. It was part of said conspiracy that the defendants knowingly and intentionally would distribute quantities of cocaine, a Schedule II narcotic drug controlled substance.

2. It was further a part of said conspiracy that the defendants and others would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities. (Title 21, United States Code, Section 846).

COUNT TWO

On or about the 29th day of June 1975, within the Eastern District of New York the defendants MICHAEL JOURNET,

- 2 -

SALVATORE RUSSO and JOHN DOE, did knowingly and intentionally distribute approximately one-half (1/2) ounce of cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1); Title 18, United States Code, §2).

A TRUE BILL.

William E. Flynn
FOREMAN

David L. Frayer
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

2 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

United States Courthouse
Brooklyn, New York

April 5, 1976
10:00 o'clock A.M.

15 Before:

16 HONORABLE MARK A. COSTANTINO, U.S.D.J.

18 I hereby certify that the foregoing is
19 a true and accurate transcript from my
stenographic notes in this proceeding.

Raymond R. Palmer

Official Court Reporter
U. S. District Court

JOSEPH BARBELLA
OFFICIAL COURT REPORTER

1
2 Appearances:

3

4 DAVID G. TRAGER, ESQ.
5 United States Attorney
6 for the Eastern District of New York

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8 BY: CHARLES CLAYMAN, ESQ.
9 Assistant U.S. Attorney

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LEGAL AID SOCIETY
Attorney for DefendantBY: EDWARD KELLY, ESQ.
Of Counsel

1 THE CLERK: United States of America v.
2

3 Michael Journet.

4 MR. KELLY: Judge, this is the defendant,
5 Michael Journet. He will withdraw his not guilty plea
6 that was previously entered to this indictment and he
7 now offers to plead guilty to count 2 of the indictment.
8 The understanding was when he is sentenced on count 2,
9 count 1 will be dismissed.

10 THE COURT: All right.

11 How old are you?

12 THE DEFENDANT: 28.

13 THE COURT: 28.

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Now, is he going to
16 plead to count 1?

17 MR. KELLY: Count 2.

18 THE COURT: Count 2.

19 MR. KELLY: Yes.

20 THE COURT: All right.

21 Mr. Journet, you heard your lawyer state to
22 the Court that you are withdrawing your plea of not
23 guilty and pleading guilty to count 2 of the indictment?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You heard him say that.

1 THE DEFENDANT: Yes.

2 THE COURT: Do you plead guilty to count 2 of
3 this indictment?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you know that by pleading guilty,
6 that you are pleading to a felony, which is a major
7 crime? Do you know that, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: That is, as opposed to a
10 misdemeanor, which means a felony, and you can be sent
11 away for more than one year? And a misdemeanor would
12 be less than one year?

13 THE DEFENDANT: Yes.

14 THE COURT: Well, in order for the Court to
15 accept a plea of guilty, you must waive certain
16 constitutional rights. And the first of which is the
17 right to a jury trial.

18 Now, a jury trial, of course, places people in
19 the box there and they hear the case and then they
20 would make a determination as to whether or not you are
21 guilty or innocent after hearing the entire case.
22 Do you waive that right?

23 THE DEFENDANT: Yes.

24 THE COURT: The second right is the right of
25 confrontation of witnesses. And that means that the

1 people who know about what they say you have done wrong
2 would come to court and testify. And then your lawyer
3 would have a right to cross-examine them to determine
4 whether or not they are being truthful in what they say
5 you have done.

6 Do you waive that?

7 THE DEFENDANT: Yes.

8 THE COURT: All right, you are pleading guilty
9 to count 2. Now, you can't be guilty and innocent.
10 Therefore, you are waiving a right under the law as to
11 a presumption of innocence. That means that no longer
12 you can be presumed innocent, but you are guilty of
13 count 2 of this indictment; is that right, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You know you are waiving that right?

16 THE DEFENDANT: Yes.

17 THE COURT: Of being innocent.

18 THE DEFENDANT: Yes.

19 THE COURT: Now, in order for the Court to
20 accept your plea of guilty you must advise the Court as
21 to whether or not there have been any other promises
22 made to you other than the promise of dismissing
23 count 1 of this indictment until the day of sentence?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is that the only promise that was

1 made to you?

2 THE DEFENDANT: Yes.

3 THE COURT: You understand, of course, that the
4 nature of that promise ran from your lawyer and the
5 Government's lawyer, and that the Court itself has
6 nothing to do with it?

7 THE DEFENDANT: Yes.

8 THE COURT: You also understand that the Court
9 does not -- will not and makes no promises to you in
10 any way whatsoever in accepting your plea of guilty?

11 THE DEFENDANT: Yes.

12 THE COURT: You also understand that the only
13 promise the Court will make to you is that it will
14 exercise discretion in your behalf, being fair and just
15 under the circumstances. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, likewise, has anyone forced
18 you in any way to plead guilty to this count 1 in the
19 indictment?

20 THE DEFENDANT: No.

21 THE COURT: Count 2, rather.

22 You know what I mean by "forced"? Did someone
23 walk up to you, your lawyer or anybody, and say, "You'd
24 better plead guilty or else you might get fifteen years,"
25 or make any kind of statement to you? Did anybody do

1 that to you?

2 THE DEFENDANT: No.

3 THE COURT: Are you sure of that now?

4 THE DEFENDANT: Yes.

5 THE COURT: Anyone cause you any duress? That
6 means, again, try to influence you so that you would not
7 stand trial and you would plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: For any reason whatsoever?

10 THE DEFENDANT: No.

11 THE COURT: Now, tell me in your own words what
12 you say that you have done wrong in reference to this
13 count 2 of this indictment.

14 THE DEFENDANT: Johnny Moustache came to the
15 boutique on Court St. where I gave him some small
16 amount of cocaine.

17 MR. CLAYMAN: Johnny Moustache is an individual
18 who is an undercover agent.

19 THE COURT: All right. That small amount, how
20 much was that?

21 THE WITNESS: Half-ounce.

22 THE COURT: Half-ounce. At the time that you
23 gave him, or whatever you did with the cocaine, did
24 you intend, No. 1, to give it to him to distribute?
25 Did you intend to do that?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you knowingly distribute it to
3 this agent?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you know by doing that, that
6 you would be in violation of law?

7 THE DEFENDANT: Yes.

8 THE COURT: You knew it was wrong to do it?

9 THE DEFENDANT: yes.

10 THE COURT: As a matter of fact, you know now
11 that it was wrong because you have been charged with
12 a violation of law; is that right, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Did you know at the time,
15 in any event, that the substance that you were
16 distributing was a controlled substance under the law?
17 In other words, it is known as an illegal drug?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Now, do you remember
20 about when you distributed the cocaine? The date of
21 the indictment would be about right, the 29th day of
22 June, 1975?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you remember what time of the day
25 it was?

1 THE DEFENDANT: Afternoon some time.

2 THE COURT: Where did you say it took place?

3 THE DEFENDANT: Court St., Brooklyn.

4 THE COURT: Where?

5 THE DEFENDANT: Court St. in Brooklyn.

6 THE COURT: Court St. in Brooklyn.

7 All right. Now, is there anything else to tell
8 me about this?

9 THE DEFENDANT: No, sir.

10 THE COURT: Now, do you still wish to plead
11 guilty?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand everything we
14 have spoken about so far? Anything in your mind which
15 you doubt what I have said about your -- what your
16 rights are?

17 THE DEFENDANT: No, sir.

18 THE COURT: I now advise you that under the
19 section that you have pleaded guilty to, which is
20 Section 841(a)(1) of the United States Code, that the
21 maximum penalty is fifteen years and/or \$25,000 fine,
22 with a minimum of three years special parole term.
23 You can receive all three of those. And the Court must
24 impose upon you on the date of sentence a minimum of
25 three years special parole term if you receive a jail

1 sentence. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, special parole term means that
4 if the event you should get involved in another matter
5 or similar matter, that you could go to jail for the
6 additional time with which this Court has assessed you
7 to a special parole term. You understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Is there anything you don't understand
10 about the sentence?

11 THE DEFENDANT: No.

12 THE COURT: Now, the Court tells you at this
13 time that on the day of sentence you will have a right
14 to advise the Court as to what you believe are
15 mitigating circumstances in your behalf as to what
16 sentence this Court will sentence you to, to be fair
17 and just under the circumstances, including probation.
18 Do you understand you can tell the Court -- and I am
19 telling you now, you have those rights, Mr. Journet.
20 All right?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Also, your lawyer will
23 have on the day of sentence -- he will advise the
24 Court as to what he believes the Court should do as to
25 a just and fair sentence under your case.

1 All right. Are there any questions?

2 THE DEFENDANT: No.

3 THE COURT: Anything you would like to ask the
4 Court at this time?

5 THE DEFENDANT: No.

6 THE COURT: You understand what I have spoken
7 about?

8 THE DEFENDANT: Yes.

9 THE COURT: You wish to still plead guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, plea is accepted.

12 MR. KELLY: Thank you.

13 MR. CLAYMAN: No objection to bail, \$10,000
14 bond being continued.

15 THE COURT: All right, continued.

16 MR. KELLY: Thank you, Judge.

17 THE COURT: Also, you understand you must go
18 before Probation, Mr. Journet?

19 MR. KELLY: Yes.

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1
2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 -----X
5 UNITED STATES OF AMERICA, :
6 :
7 -against- : 75-CR-849

8 MICHAEL JOURNET and :
9 JOHN DOE, :
10 :
11 Defendants. :
12 -----X

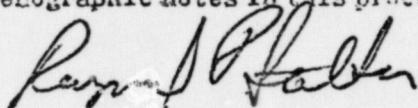
13 United States Courthouse
14 Brooklyn, New York

15 April 5, 1976
16 10:00 o'clock A.M.

17 Before :

18 HONORABLE MARK A. COSTANTINO, U.S.D.J.

19 I hereby certify that the foregoing is
20 a true and accurate transcript from my
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5 United States Attorney
for the Eastern District of New York

BY: CHARLES CLAYMAN, ESQ.
Assistant U.S. Attorney

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LEGAL AID SOCIETY
Attorney for Defendant

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2 THE CLERK: United States of America v.
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MR. KELLY: Count 2.
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THE DEFENDANT: Yes, sir.
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6 that you are pleading to a felony, which is a major
7 crime? Do you know that, sir?

8 THE DEFENDANT: Yes, sir.

13 THE DEFENDANT: Yes.

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15 accept a plea of guilty, you must waive certain
16 constitutional rights. And the first of which is the
17 right to a jury trial.

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19 the box there and they hear the case and then they
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9 does not -- will not and makes no promises to you in
any way whatsoever in accepting your plea of guilty?

10 THE DEFENDANT: Yes.

11 THE COURT: You also understand that the only
12 promise the Court will make to you is that it will
13 exercise discretion in your behalf, being fair and just
14 under the circumstances. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, likewise, has anyone forced
17 you in any way to plead guilty to this count 1 in the
18 indictment?

19 THE DEFENDANT: No.

20 THE COURT: Count 2, rather.

21 You know what I mean by "forced"? Did someone
22 walk up to you, your lawyer or anybody, and say, "You'd
23 better plead guilty or else you might get fifteen years,"
24 or make any kind of statement to you? Did anybody do
25

1 that to you?

2 THE DEFENDANT: No.

3 THE COURT: Are you sure of that now?

4 THE DEFENDANT: Yes.

5 THE COURT: Anyone cause you any duress? That
6 means, again, try to influence you so that you would not
7 stand trial and you would plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: For any reason whatsoever?

10 THE DEFENDANT: No.

11 THE COURT: Now, tell me in your own words what
12 you say that you have done wrong in reference to this
13 count 2 of this indictment.

14 THE DEFENDANT: Johnny Moustache came to the
15 boutique on Court St. where I gave him some small
16 amount of cocaine.

17 MR. CLAYMAN: Johnny Moustache is an individual
18 who is an undercover agent.

19 THE COURT: All right. That small amount, how
20 much was that?

21 THE WITNESS: Half-ounce.

22 THE COURT: Half-ounce. At the time that you
23 gave him, or whatever you did with the cocaine, did
24 you intend, No. 1, to give it to him to distribute?
25 Did you intend to do that?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you knowingly distribute it to
3 this agent?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you know by doing that, that
6 you would be in violation of law?

7 THE DEFENDANT: Yes.

8 THE COURT: You knew it was wrong to do it?

9 THE DEFENDANT: yes.

10 THE COURT: As a matter of fact, you know now
11 that it was wrong because you have been charged with
12 a violation of law; is that right, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Did you know at the time,
15 in any event, that the substance that you were
16 distributing was a controlled substance under the law?
17 In other words, it is known as an illegal drug?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Now, do you remember
20 about when you distributed the cocaine? The date of
21 the indictment would be about right, the 29th day of
22 June, 1975?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you remember what time of the day
25 it was?

1 THE DEFENDANT: Afternoon some time.

2 THE COURT: Where did you say it took place?

3 THE DEFENDANT: Court St., Brooklyn.

4 THE COURT: Where?

5 THE DEFENDANT: Court St. in Brooklyn.

6 THE COURT: Court St. in Brooklyn.

7 All right. Now, is there anything else to tell
8 me about this?

9 THE DEFENDANT: No, sir.

10 THE COURT: Now, do you still wish to plead
11 guilty?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand everything we
14 have spoken about so far? Anything in your mind which
15 you doubt what I have said about your -- what your
16 rights are?

17 THE DEFENDANT: No, sir.

18 THE COURT: I now advise you that under the
19 section that you have pleaded guilty to, which is
20 Section 841(a)(1) of the United States Code, that the
21 maximum penalty is fifteen years and/or \$25,000 fine,
22 with a minimum of three years special parole term.

23 You can receive all three of those. And the Court must
24 impose upon you on the date of sentence a minimum of
25 three years special parole term if you receive a jail

1 sentence. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, special parole term means that
4 if the event you should get involved in another matter
5 or similar matter, that you could go to jail for the
6 additional time with which this Court has assessed you
7 to a special parole term. You understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Is there anything you don't understand
10 about the sentence?

11 THE DEFENDANT: No.

12 THE COURT: Now, the Court tells you at this
13 time that on the day of sentence you will have a right
14 to advise the Court as to what you believe are
15 mitigating circumstances in your behalf as to what
16 sentence this Court will sentence you to, to be fair
17 and just under the circumstances, including probation.
18 Do you understand you can tell the Court -- and I am
19 telling you now, you have those rights, Mr. Journet.
20 All right?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Also, your lawyer will
23 have on the day of sentence -- he will advise the
24 Court as to what he believes the Court should do as to
25 a just and fair sentence under your case.

1 All right. Are there any questions?

2 THE DEFENDANT: No.

3 THE COURT: Anything you would like to ask the
4 Court at this time?

5 THE DEFENDANT: No.

6 THE COURT: You understand what I have spoken
7 about?

8 THE DEFENDANT: Yes.

9 THE COURT: You wish to still plead guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, plea is accepted.

12 MR. KELLY: Thank you.

13 MR. CLAYMAN: No objection to bail, \$10,000
14 bond being continued.

15 THE COURT: All right, continued.

16 MR. KELLY: Thank you, Judge.

17 THE COURT: Also, you understand you must go
18 before Probation, Mr. Journet?

19 MR. KELLY: Yes.

21 * * *

CERTIFICATE OF SERVICE

August 27, 1976

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
Eastern District of New York.

Phil Strickland